

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JEFFREY WAYNE DAVIS, #343112 §
VS. § CIVIL ACTION NO. 6:11cv365
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed for failure to exhaust state habeas corpus remedies. The Petitioner has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit.

The Petitioner received five 45 year sentences on September 14, 1982. He argued that the State has erroneously treated his sentences as consecutive sentences. He also challenged the State's method of determining his discharge, parole and mandatory supervision release dates. In his objections, he erroneously argued that exhaustion of state remedies is not required. *See Whitehead v. Johnson*, 157 F.3d 384 (5th Cir. 1998) (discussing the exhaustion requirement regarding time calculation claims involving consecutive sentences beginning with a 1982 sentence). The Petitioner must exhaust his state remedies as outlined in the Report and Recommendation. The objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for failure to exhaust state habeas corpus remedies. A certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 11th day of August, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE